STATE OF MICHIGAN
IN THE SUPREME COURT

FRED PAQUIN,

Plaintiff-Appellant,

v

CITY OF ST. IGNACE,

Defendant-Appellee,

and

ATTORNEY GENERAL BILL SCHUETTE,

Intervening Defendant-Appellee.
_____/

Supreme Court No. 156823

Court of Appeals No. 334350

Mackinac Circuit Court No. 15-7789-CZ

INTERVENING DEFENDANT-APPELLEE ATTORNEY GENERAL BILL SCHUETTE'S BRIEF IN OPPOSITION TO PLAINTIFF'S APPLICATION FOR LEAVE TO APPEAL

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COUNTER-STATEMENT OF JURISDICTION

This Court has jurisdiction over plaintiff-appellant Fred Paquin's appeal from the Court of Appeals' decision affirming the trial court's grant of summary disposition in favor of defendant-appellee City of St. Ignace under MCR 7.305.

COUNTER-STATEMENT OF QUESTION PRESENTED

1. Whether the plaintiffs' felony conviction arising out of his service with the Sault Indian Tribe bars him from holding local elective office under article 11, § 8 of the Michigan Constitution.

   Appellant's answer: No.

   Appellees' answer: Yes.

   Trial court's answer: Yes.

   Court of Appeals' answer: Yes.

CONSTITUTIONAL PROVISION INVOLVED

Article 11, § 8 of Michigan's Constitution provides:

> A person is ineligible for election or appointment to any state or local elective office of this state and ineligible to hold a position in public employment in this state that is policy-making or that has discretionary authority over public assets if, within the immediately preceding 20 years, the person was convicted of a felony involving dishonesty, deceit, fraud, or a breach of the public trust and the conviction was related to the person's official capacity while the person was holding any elective office or position of employment in local, state, or federal government. This requirement is in addition to any other qualification required under this constitution or by law.
>
> The legislature shall prescribe by law for the implementation of this section.

INTRODUCTION

The plaintiff, Fred Paquin, is a convicted felon. He defrauded the federal government by misappropriating for his own personal use federal grant money awarded to the police department of the Sault Ste. Marie Tribe of Chippewa Indians. The question before the Court of Appeals was whether his conviction should be treated differently from similar convictions for purposes of article 11, § 8 of the Michigan Constitution, because it arose out of his service with a federally recognized Indian tribe. The Court of Appeals correctly concluded it should not.

Section 8 prohibits a person from holding an elected position in a local government of this State if the person was convicted of a felony involving fraud and if the conviction "related to the person's official capacity while the person was holding any elective office or position of employment *in local, state, or federal government*." Const 1963, art 11, § 8 (emphasis added). The crux of the case was whether Paquin's service as the Sault Tribe's Chief of Police and Chairperson of its Board of Directors, constitutes a position or office in "local . . . government." Relying on the plain meaning of the term "local government," the City of St. Ignace and the Attorney General argued that it did. The trial court and the Court of Appeals agreed; thus Paquin is presently barred from running for office.

Undeterred, Paquin seeks leave to appeal in this Court. He again argues that the language of article 11, § 8 must be limited to villages, cities, townships, and counties of the State of Michigan. But the relevant language in § 8 contains no such limitations. He further argues that § 8 cannot lawfully be applied to him because

§ 8 cannot lawfully be applied to the Sault Tribe based on sovereignty principles. But the sovereignty argument, as the Court of Appeals recognized, is a red herring. Section 8 applies to Paquin because he seeks a local elective office of this State—he wants to run for the St. Ignace city council. The question, then, although of first impression, was a simple one – does the plain language of § 8 apply to his prior employment and office-holding with the Sault Tribe.

It does. The Sault Tribe bears the hallmarks of a traditional "local . . . government," as that phrase may be defined and understood and plainly falls within the broad language of § 8. Moreover, the purpose of § 8 is to maintain the public trust in Michigan's elected officers by seeking to ensure that only trustworthy persons will hold public office in Michigan. Paquin's conviction stemming from his leadership roles within the Sault Tribe demonstrates a lack of such trustworthiness, and is a prime example of why the People of Michigan enacted article 11, § 8. The plain language of this provision applies to this plaintiff, and it bars him from holding elective office. Further, though this case involves the Constitution, there is no reason to think that this factual scenario, where a person commits one of the covered felonies while a tribal official and then runs for a "state or local elective office of this state," Const 1963, art 11, § 8, is likely to be a frequently recurring issue. In the end, the Court of Appeals did not err in its holding. This Court should deny leave.

COUNTER-STATEMENT OF FACTS AND PROCEEDINGS

In July 2013, Attorney General Bill Schuette received an opinion request under MCL 14.32 asking whether article 11, § 8 of the Constitution rendered Fred Paquin ineligible to run for St. Ignace City Council in the November 2013 general election. In a formal opinion, the Attorney General concluded (without mentioning Paquin by name, in keeping with past opinion-writing practice) that Paquin's federal felony conviction, committed while serving in an official capacity with the Sault Ste. Marie Tribe of Chippewa Indians, fell within article 11, § 8's prohibition. OAG, 2013-2014, No 7273, p 30 (August 15, 2013), available at http://www.ag.state.mi.us/opinion/datafiles/2010s/op10352.htm. City of St. Ignace officials followed the guidance provided by the opinion, and Paquin's name did not appear on the November 2013 general election ballot.

In 2015, Paquin again sought to run for a seat on the St. Ignace City Council, and city officials again rejected his qualifying petition based on the guidance provided by the 2013 opinion. In response, Paquin filed the instant complaint for declaratory judgment against the City of St. Ignace requesting an order that article 11, § 8 does not apply to him.

The City apprised the Department of Attorney General regarding the lawsuit. Subsequently, Paquin filed a motion for summary disposition. In light of Paquin's challenge to the interpretation of § 8 by the Attorney General, and the City's reliance on the opinion in denying him ballot access, Attorney General Schuette moved to file an amicus curiae brief in support of the City and requested

oral argument. The City filed a concurrence regarding the Attorney General's amicus curiae brief, and the trial court granted the Attorney General's motion to participate as amicus curiae in both briefing and oral argument.

After arguments by all counsel on the merits, the trial court denied Paquin's motion for summary disposition and dismissed his complaint. The court was persuaded by the Attorney General's analysis as set forth in the amicus curiae brief and the opinion.

Paquin appealed. Attorney General Schuette filed a motion to intervene as a defendant-appellee in the Court of Appeals, which was granted on February 21, 2017. In a published opinion issued on October 19, 2017, the Court of Appeals rejected Paquin's arguments and affirmed summary disposition. (Appendix 1, COA opinion.) In addition to rejecting Paquin's interpretation of § 8, the Court of Appeals also agreed with the Attorney General that Paquin waived any argument regarding the self-executing nature of art 11, § 8, and further agreed that § 8 is self-executing. (Appendix 1, Opinion, p 4 n 3.)

ISSUE PRESERVATION

The Attorney General's arguments were preserved below in his brief on appeal, in his amicus curiae brief filed with the circuit court, and at oral argument.

STANDARD OF REVIEW

The grant or denial of summary disposition is reviewed de novo, *Goldstone v Bloomfield Twp Pub Library*, 479 Mich 554, 558 (2007), so are questions of constitutional interpretation, *Makowski v Governor*, 495 Mich 465, 470 (2014).

ARGUMENT

I. The Court of Appeals correctly held that the Sault Tribe falls within the definition of a "local . . . government" under article 11, § 8 of the Michigan Constitution, and therefore Paquin's federal conspiracy-to-defraud conviction prohibits him from holding local office.

The Court of Appeals' interpretation and application of article 11, § 8 to Paquin is supported by the plain text of the provision itself and is wholly consistent with the purpose of the amendment. It is also consistent with the law governing Indian Tribes, and the State of Michigan's own recognition of the status of Indian Tribes in this State. This Court should deny leave.

A. Article 11, § 8 prohibits convicted felons from running for office if the elements of the provision are met.

Michigan voters added article 11, § 8 to the Michigan Constitution pursuant to article 12, § 1, which provides for constitutional amendments by legislative proposal and a statewide vote. Const 1963, art 12, § 1. Section 8 began as Senate Joint Resolution V (2010), and voters approved the amendment at the November 2, 2010 general election. It took effect on December 18, 2010. Section 8 provides, in part:

> A person is ineligible for election or appointment to any state or local elective office of this state and ineligible to hold a position in public employment in this state that is policy-making or that has discretionary authority over public assets if, within the immediately preceding 20 years, the person was convicted of a felony involving dishonesty, deceit, fraud, or a breach of the public trust and the conviction was related to the person's official capacity while the person was holding any elective office or position of employment in *local, state, or federal government*. This requirement is in addition to any other qualification required under this constitution or by law. [Const 1963, art 11, § 8 (emphasis added).]

Shortly before this amendment, Paquin pled guilty (on July 23, 2010) to conspiracy to defraud the United States by dishonest means under 18 USC 371. The actions prompting the federal indictment and guilty plea occurred while Paquin was serving as Chief of Police for the Sault Tribe's police department, and as an elected member of the Tribe's Board of Directors. Between 2001 and 2006, the Tribal police department received substantial grant money from the United States Department of Justice's Community Oriented Policing Services (COPS) Office, with federal shares totaling over $1 million. In pleading guilty to the charge, Paquin admitted to conspiring to misapply the grant funds for his own personal and political benefit. Paquin was sentenced to imprisonment and ordered to pay restitution on December 15, 2010, and was released from prison on November 30, 2010. This conviction currently disqualifies Paquin from running for local office under article 11, § 8.

B. The elements of article 11, § 8 are satisfied.

Section 8 applies to Paquin as long as its elements are satisfied. Although Paquin conceded in the trial court and the Court of Appeals the first three elements discussed below, the Attorney General will address all of the elements.

1. The office sought is a state or local elective office.

Section 8 provides for ineligibility "for election or appointment to any state or local elective office of this state." Const 1963, art 11, § 8. Paquin sought election to the St. Ignace City Council, which is a local elective office of the State of Michigan.

See, e.g., MCL 117.3; MCL 168.321. Thus, § 8 applies to this office. The Court of Appeals agreed. (Appendix 1, Opinion, p 4.)

2. Paquin's conviction is a felony involving dishonesty, deceit, or fraud, and is within the immediately preceding 20 years.

To be ineligible under § 8, Paquin must have been "convicted of a felony involving dishonesty, deceit, fraud, or a breach of the public trust," and the conviction must have occurred "within the immediately preceding 20 years." Const 1963, art 11, § 8. Paquin pled guilty to conspiracy to defraud the United States by dishonest means under 18 USC 371, for misusing federal grant money. Under federal law, violation of 18 USC 371 is a Class D felony. See 18 USC 371; 18 USC 3559(a)(4). Paquin correctly concedes that this offense involved dishonesty, deceit, fraud, or a breach of the public trust. (Appl'n, p 2.) Finally, judgment was imposed against Paquin on December 15, 2010, well within the 20 years specified in § 8. Thus, § 8 applies to the felony conviction at issue here. The Court of Appeals agreed. (Appendix 1, Opinion, p 4.)

3. Paquin's conviction related to his official capacity as an employee and government official with the Sault Tribe.

Section 8 provides that the conviction must be "related to the person's official capacity." Const 1963, art 11, § 8. At the time of the offense, Paquin was employed as the Sault Tribe's Chief of Police, and was an elected member of the Tribe's Board of Directors. Paquin took advantage of those positions to misuse grant funds awarded to the Tribe through the COPS Tribal Resources Grant Program. As he

concedes, the conviction clearly related to Paquin's official capacities as Chief of Police and member of the Board of Directors. (Appl'n, p 2.) The Court of Appeals agreed. (Appendix 1, Opinion, pp 4-5.)

4. Paquin's positions with the Sault Tribe constitute an elective or employment position in "local . . . government."

The only element at issue below was whether Paquin's former positions within the Sault Tribe constitute an "elective office or position of employment in local, state, or federal government."

The Court of Appeals gave the undefined terms "local . . . government" their plain and ordinary meaning, see *Nat'l Pride At Work, Inc v Governor*, 481 Mich 56, 67 (2008):

> *Merriam-Webster's Collegiate Dictionary* (2007), p 730, defines "local government" as: "1. the government of a specific local area constituting a major political unit (as a nation or a state); *also*: the body of persons constituting such a government. The word "local" means, in relevant part, "of, relating to, or characteristic of a particular place: not general or widespread." *Id*. The relevant definition of "government" is "the body of persons that constitutes the governing authority of a political unit or organization[.]" *Id*. at 541. [Appendix 1, Opinion, p 5.]

The Court then applied those definitions to the Sault Tribe, observing that it "was beyond dispute that the Sault Tribe of Chippewa Indians is a sovereign political community, or unit" that possesses " 'rights in matters of local self-government.' " *Id*., quoting *Santa Clara Pueblo v Martinez*, 436 US 49 55-56 (1978). The Court continued that "Michigan clearly views Indian tribes as units of local government with authority to execute local governmental functions," and cited

several examples. *Id.*, pp 5-6. Finally, examining Paquin's roles with the Sault Tribe, the Court concluded:

> [I]t is also undisputed in the present case that the Board of Directors is the governing body of the Sault Tribe of Chippewa Indians, and that plaintiff served as an elected member of that board. Thus, to the extent that the Tribe is an "independent political communit[y], retaining [its] original natural rights in matters of local self-government," and plaintiff was an elected member of the Tribe's governing body, plaintiff served as an elected official in a local government. Const 1963, art 11, § 8 has no language stating that the local governmental entity must be a political subdivision of the state of Michigan. Moreover, as chief of police in the Tribe's Law Enforcement Division, plaintiff also held a position of employment in local government. . . .
>
> In light of the foregoing, we hold that the Tribe constitutes a local government and that plaintiff's employment with the Tribe constituted employment in "local, state, or federal government" for purposes of Const 1963, art XI, § 8. [*Id.*, at p 6 (citations omitted).]

Importantly, in reaching this conclusion the Court of Appeals rejected Paquin's argument that § 8's application should be limited to local governments that are political subdivisions *of* the State of Michigan.

The Court also rejected Paquin's argument that equating the Sault Tribe with a local government of Michigan infringed on the Tribe's sovereignty: "Such a holding does not diminish or undermine the Tribe's inherent sovereign authority." *Id.* The Court acknowledged the state laws generally are not applicable to tribal Indians on reservation land. *Id.*, citing *Huron Potawatomi, Inc v Stinger* 227 Mich App 127, 132 (1997). But as the Court recognized, "[i]n the instant case, no one is seeking to prohibit plaintiff from running for a position in the Tribe or otherwise to interfere in the Tribe's regulation of its internal matters." *Id.* Rather, § 8 "is being applied to prohibit plaintiff from running for a position on defendant's city council.

In other words, the constitutional provision is being used to assess the qualification of a potential candidate for a position on the city council of a Michigan municipality, not a position in the Tribe." *Id.* And, as the Court observed, "[i]n seeking to run for an elective position in a Michigan city, plaintiff was acting in his capacity as a Michigan citizen rather than a member of the Tribe. As a Michigan citizen, plaintiff is subject to the same laws as other Michigan citizens when seeking to run for an office in a Michigan municipality." *Id.* at pp 6-7, citing *Mich United Conservation Clubs v Anthony*, 90 Mich App 99, 109 (1979); *Mescalero Apache Tribe v Jones*, 411 US 145, 148-149 (1973).

The Court of Appeals did not err in reaching this conclusion. The Court's interpretation and application of article 11, § 8 to Paquin is supported by the plain language of the provision. In his application for leave to appeal, Paquin makes the same two points he argued below: (1) that the phrase "local, state, or federal government" cannot be read to include the Sault Tribe; and (2) that to do so violates tribal sovereignty principles. Both arguments were addressed and rejected by the Court of Appeals as unpersuasive.

As to the first, Paquin asserts that "it is more logical to infer that they [the drafters] were referring to the common understanding of local, state or federal government within the sovereign United States: specifically; a village, a township, a city, a county, the State of Michigan, another state, or the federal government." (Appl'n p 10.) There is certainly no dispute that the phrase "local . . . government" as used in § 8 would include units of government familiar to Michigan residents,

such as villages, cities, townships, and counties. Indeed, these are the subordinate units of government that make up the State of Michigan. See Const 1963, art 7, §§ 1-34. But there also can be no dispute that the word "local" as used in the phrase "local, state, or federal government" in § 8 is not limited to villages, cities, townships, and counties *of* the State of Michigan—in other words, political subdivisions of the State of Michigan. This is demonstrated by the fact that earlier clauses in § 8 include conditions such as "of this state" and "in this state" that do not appear in the clause at issue:

> A person is ineligible for election or appointment to any state or local elective office *of this state* and ineligible to hold a position in public employment *in this state* . . . if, within the immediately preceding 20 years, the person was convicted of a felony . . . and the conviction was related to the person's official capacity while the person was holding any elective office or position of employment *in local, state, or federal government*. [Const 1963, art 11, § 8 (emphasis added.]

Thus, this provision is not limited to felonies that arise from offices or positions "of this state" or "in this state." Rather, it applies broadly to any qualifying conviction that arises out of service "in local . . . government," meaning service in any organized body that constitutes a "local . . . government." As a result, if Paquin had been convicted of the same crime but based on service with a local government in another state, say Ohio, that conviction would bar him from running for a local elective office here in Michigan, as long as it was within the last 20 years.[1]

[1] The Legislature's decision not to use specific terms like village, city, township, and county in § 8 was reasonable because not all States are organized into political

It is no stretch to interpret § 8 as similarly capturing Paquin's conviction arising out of his service as an officer and employee with the Sault Tribe. As the Court of Appeals held, the Sault Tribe functions as a "local government" in Michigan similar to a village, city, township, or county. The Sault Tribe is a federally recognized Indian tribe,[2] and has around 40,000 enrolled members, many of whom live in the Upper Peninsula.[3] The Tribe's headquarters are in Sault Ste. Marie, Michigan, and the Tribe provides educational, health, housing, public safety, and other services in seven counties in the Upper Peninsula.[4] The "government" for the Sault Tribe is its popularly elected Board of Directors and its agencies or departments like the Tribal Law Enforcement Department, which administer and enforce the Tribe's Constitution and By-laws, as well as numerous tribal ordinances.[5] See, e.g., *Howlett v Salish and Kootenai Tribes of Flathead Reservation, Montana*, 529 F2d 233 (CA 9, 1976) ("Indian tribes . . . may structure their government in any manner they please"); *Royal v Police and Fire Comm of*

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subdivisions bearing those names. For example, Alaska is organized into "borough" governments. See Alaska Const, art 10, § 3.

[2] See Federal Register, Vol 82, No 10 (January 17, 2017), at https://www.gpo.gov/fdsys/pkg/FR-2017-01-17/pdf/2017-00912.pdf.

[3] See "History & Culture" tab, "Story of our People," at http://www.saulttribe.com/history-a-culture/story-of-our-people.

[4] See "Service Area" at http://www.saulttribe.com/about-us/service-area. See also "Membership Services" tab at http://www.saulttribe.com/membership-services.

[5] See Sault Tribe Constitution, Art. IV, under "Government" tab at http://www.saulttribe.com/government.

Ecorse, 345 Mich 214, 219 (1956) ("control of a . . . police department is a function of local . . . government") (internal quotation marks and citation omitted).

Through its governing body and agencies, the Sault Tribe provides numerous public services to its members. In doing so, tribal officials and employees such as members of the Tribe's Board of Directors and law enforcement officers hold positions of public trust, and exercise governmental authority for the Tribe. Moreover, the Sault Tribe operates only as to its members and within its territory. See *Oklahoma Tax Comm v Citizen Band Potawatomi Tribe*, 498 US at 505, 509 (1991) ("Indian tribes . . . exercise inherent sovereign authority over their members and territories.").[6] In other words, the Tribe's authority is limited to a particular place or part of a larger area, similar to a village, city, township, or county government of the State of Michigan.[7] In brief, the words "local . . . government" apply here to the Sault Tribe.

Indeed, federal courts have described Indian tribes as functioning like local units of government:

> [M]odern tribal governments routinely exercise civil governmental authority over a range of day-to-day activities, much like comparable state and local government entities. Tribal codes and ordinances govern subject matter ranging from agriculture to zoning, and tribal departments and agencies administer and deliver an expanding array of community services—from police, fire, and other emergency services to education, health, housing, justice, employment assistance, environmental protection, cultural preservation, land use planning,

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[6] See Sault Tribe Constitution, Art. II, under "Government" tab at http://www.saulttribe.com/government.

[7] Paquin did not dispute any of this factual information at the circuit court or in the Court of Appeals.

> natural resource conservation and management, road maintenance, water and public utilities. Indian tribes fit squarely within the ranks of modern American civic bodies, sharing the common duty and responsibility to provide essential services to the people of the communities they serve. [*MacArthur v San Juan Cty*, 391 F Supp 2d 895, 937-938 (D Utah, 2005), rev'd in part, aff'd in part, 497 F3d 1057 (CA 10, 2007).]

Further, federal agencies and federal courts sometimes equate tribal government with local government, even when applicable federal law does not require it. See OAG, 2003-2004, No 7134, pp 44, 46 (May 21, 2003) (" '[T]he Code of Federal Regulations makes clear that the administration and maintenance of Indian reservation roads and bridges is basically a function of the local government, which, as regards Route 5, is the Northern Cheyenne Tribe.' "), quoting *McDonald v Means*, 309 F3d 530, 539 (CA 9, 2002) (internal quotation marks and citation omitted). Any suggestion that the phrase "local . . . government" affirmatively excludes Indian tribes is wrong. The Michigan Legislature has equated Indian Tribes to various government units in a number of different statutes, see MCL 141.1053; MCL 333.13704; MCL 124.112(d); MCL 124.502; MCL 450.832; MCL 722.1522, including "local government," see MCL 408.101, Executive Reorganization Order, Department of Labor (" 'Local units of government' means counties, townships, cities, villages or federally-recognized Indian tribes"); Mich Admin Code, R 29.2163(h) (" 'Local government' has the meaning given this term by applicable state law and includes Indian tribes").[8]

[8] In *Sault Ste. Marie Tribe of Chippewa Indians v Bouschor*, 485 Mich 1052 (2010), this Court held that the Sault Tribe was not a governmental agency for purposes of

Of course, some statutes define "local government" as including only political subdivisions of the state. See, e.g., MCL 18.1115(5). But given the Michigan Legislature's inclusion of Indian tribe's as government units in various other statutes, it is reasonable to interpret the phrase "local . . . government" in § 8, which was drafted by the Legislature, as encompassing the Sault Tribe. *People v Nash*, 418 Mich 196, 209 (1983); *Plymouth Twp v Wayne Cty Bd of Comm'rs*, 137 Mich App 738, 750 (1984) ("The drafters of a constitutional amendment are presumed to know about existing laws and constitutional provisions and thus to have drafted their provision accordingly."); *Saginaw City Council v Saginaw Policemen & Firemen Retirement System Trustees*, 321 Mich 641, 647 (1948) (the framers of a provision must be presumed to have been aware of existing laws and court decisions and to have drafted accordingly).[9]

As to the second issue, interpreting the phrase "local . . . government" in § 8 to include the Sault Tribe, does not interfere with tribal sovereignty. It is true that "state laws are generally not applicable to tribal Indians on an Indian reservation except where Congress has explicitly provided that state law shall apply." *Huron*

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the Governmental Tort Liability Act, MCL 681.1401 *et seq*., based on the specific language of that Act.

[9] Indeed, other courts facing similarly silent provisions have held Indian tribes to be included. See, e.g., *Larch v Eastern Band of Cherokees*, 872 F2d 66 (CA 4 1989) (Indian tribe was a "state" for purposes of Parental Kidnapping Prevention Act); *Tracy v Maricopa County Superior Court*, 810 P2d 1030 (Ariz, 1991) (Indian tribe was a "state" for purposes of Uniform Act to Secure the Attendance of Witnesses from Without the State in Criminal Proceedings); *Martinez v Superior Court in and for La Paz County*, 731 P2d 1244 (Ariz, 1987) (Indian tribe was a "state" for purposes of the Uniform Child Custody Jurisdiction Act).

Potawatomi, 227 Mich App at 132 (citations omitted); see also, *Taxpayers of Michigan Against Casinos v State*, 471 Mich 306, 319 (2004) (summarizing sovereignty principles). The Attorney General agrees that § 8 cannot be applied to the Sault Tribe or its members on tribal land. In other words, § 8 could not be applied to prohibit a tribe member with a qualifying conviction from running for a seat on the Sault Tribe's elected Board of Directors.

But, as the Court of Appeals noted, that is not the case here. Article 11, § 8 is not being applied to the Sault Tribe, its government, or tribal lands. Rather, this constitutional provision is being applied to Paquin in his capacity as a citizen of Michigan seeking to run for a local governmental office outside the Sault Tribe. "[M]embers of the various Indian tribes are citizens . . . of the state within which they reside." *Michigan United Conservations Clubs*, 90 Mich App at 109 (citations omitted). And "[a]bsent express federal law to the contrary, [tribe members] going beyond reservation boundaries have generally been held subject to non-discriminatory state law otherwise applicable to all citizens of the State." *Mescalero Apache Tribes*, 411 US at 148-149 (citations omitted). Construing article 11, § 8 to include the Sault Tribe as "local. . . government" for its purposes and applying § 8 to Paquin under the facts and circumstances here does not violate the Sault Tribe's sovereignty over its land and members.

Furthermore, this result is entirely consistent with the purpose of § 8, which is to maintain the public trust in Michigan's elected and appointed officials. Section 8 effectuates this purpose by seeking to ensure that only trustworthy persons will

hold public office in Michigan, and it uses criminal history as evidence pertaining to trustworthiness. To help discern the common understanding of constitutional language, it is appropriate to consider "the circumstances leading to the adoption of the provision and the purpose sought to be accomplished." *Nash*, 418 Mich at 209. This principle supports an inclusive construction of "local, state, or federal government."

Again, § 8 began as Senate Joint Resolution V of 2010 and was supported by arguments such as the following:

> State and local government should be more responsive to the needs of residents, and governmental officials need to garner more trust and credibility with the electorate. To accomplish this, those with a track record of committing felonies involving deceit *while in public office or government employment* should be prohibited from holding positions of public trust. Recent events in the City of Detroit, where the former mayor, a former city council member, and former members of the city's administration have been convicted of felonies committed while in office, shine a bright light on the need for stronger restrictions on the election or appointment of felons. [Senate Fiscal Analysis, SJR V, August 20, 2010, p 1 (emphasis added).]

A concern about how the misuse of public funds would affect the public trust also contributed to the adoption of § 8. See House Legislative Analysis, SJR V, June 17, 2010, p 1. Here, Paquin admitted to conspiring to misapply public funds. That crime is exactly the type of behavior that people would reasonably expect to trigger the protections of § 8.

Like the text of § 8, the history that led to its adoption demonstrates a desire to maintain the public trust in Michigan's elected officers. There is nothing in § 8 to suggest that previous convictions related to service in tribal government are less

relevant to protection of the public trust than convictions related to service in traditional municipal, state, or federal governments. The circumstances surrounding the adoption of § 8 support a conclusion that § 8 applies to Paquin's convictions related to his service with the Sault Tribe.

In sum, the phrase "local . . . government" is broad enough to include the Sault Tribe where the Tribe functions like a traditional local government, the context of the anti-fraud constitutional provision demonstrates that it does not narrowly apply only to political subdivisions of the State, and the provision's purpose was to prevent the very thing at issue here, to stop someone convicted of fraud from running from public office. This Court should deny leave to appeal.

CONCLUSION AND RELIEF REQUESTED

In light of the text, context, and purpose of § 8 and the circumstances leading to its adoption, Paquin's elected position on the Sault Tribe's Board of Directors and his employment as Police Chief for the Sault Tribe, were positions of "elective office or . . . employment in local . . . government" as contemplated by § 8. Given that the other elements of § 8 are also satisfied, § 8 applies and renders Paquin ineligible to hold local elective office for a period of 20 years. The Court of Appeals correctly affirmed the trial court's July 26, 2016, opinion and order dismissing Paquin's complaint. As a result, this Court should deny leave.

Respectfully submitted,

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